

REMARKS

The Office Action dated March 22, 2005 has been read and carefully considered and the present Amendment submitted in order to clarify the claim language with respect to the cited references.

In that Office Action, claims 1-2, 10, 15-20, 30-32, 35, 39, 46-48 and 50-51 were rejected under 35 U.S.C. 102(e) as being clearly anticipated by Persyk *et al*, U.S. Patent 6,238,027. Claims 10-11, 13-14, 28, 32-33 and 48-51 were rejected under 35 U.S.C. 103 (a) as being unpatentable over Persyk *et al*. Finally, claim 45 was rejected under 35 U.S.C. 103 (a) as being unpatentable over Persyk *et al* in view of Marker, U.S. 4,855,110.

Subsequent to the filing of the present application, Applicant requested and scheduled an interview with Examiner Lyle Alexander but unfortunately, Examiner Alexander was ill on the day of the scheduled interview and Examiner LaToya L. Cross substituted in his stead for the interview. Applicant appreciates the courteous and helpful interview with Examiner Cross. A copy of the Interview Summary is attached hereto and, in summary, the substance of the interview is that Applicant initially explained the basis for the subject matter of the 9/17/04 amendment to the specification as being based upon the range of wavelengths that are illustrated in the various spectra illustrated in Figs. 3B, 4B and 5B and that portion of the specification at page 6, line 3-4 that describe that typical range of spectra for infrared analysis.

A review of the prior art was also discussed and the distinction made that the present invention relates to a sample holder that provides a sample supporting substrate where the sample holder has an aperture for use in a spectrophotometer or infrared filterometer where the infrared light can pass through the aperture wherein the substrate is located and where the sample to be analysed is deposited. Thus, the infrared light passes through the substrate, the sample and no other material within the aperture that could absorb infrared energy. It was further pointed out that the cited references all have some material that would basically block or

absorb infrared light in any effort to pass the infrared energy through the sample to be analysed and therefore, the prior art devices simply could not be used in a spectrophotometer or filterometer to analyse samples positioned on the substrate where the substrate was prepared by cutting etc. and where there is no precision optical polishing of the substrate.

As such, claim 1 as been amended to recite a holder that comprises a mounting means having an “aperture formed therein” and which has the infrared transmitting sample supporting substrate within the aperture and no other material within the aperture that could substantially absorb the infrared light. Therefore, the substrate can have a sample to be analysed placed thereon and the infrared light can pass through the aperture, the infrared transmitting sample support substrate and not be absorbed by any other material that could affect the integrity of the infrared light to analyse the sample. Thus, it is believed that the claim is now in accord with the results of the interview conducted with Examiner Cross and summarized in the attached paper as allowing the transmission of infrared light through the sample and substrate without any additional panels or substrates that would prevent the transmission of infrared light through the aperture formed in the sample holder. As previously explained in the prior amendment, the Persyk *et al* reference does not provides a through path for infrared light to pass through a substrate without the presence of some additional material that would seriously absorb or block that passage of infrared light to the extent that the Persyk *et al* devices would not be applicable for use in a spectrophotometer or filterometer.

In addition, claim 1 has also been amended to add a further distinction, that is, there are claimed two materials used in the construction of the holder. The mounting means is comprised of a first material while the sample supporting substrate is comprised of a second material. As such, it is clear that the mounting means can be constructed of a material that can block the transmission of infrared light while the substrate itself must be comprised of a different material since that second material must allow the infrared light to pass therethrough.

In the next independent claim, that of method claim 18, the language has also been amended to recite a mounting means that has an “aperture” therethrough and having the infrared light transmitting sample supporting substrate within that aperture so that the infrared

light passes through the aperture, the infrared light transmitting sample supporting substrate and “no other material within the aperture that absorbs infrared light” and thus is similar in scope as claim 1 and differentiates from the Persyk *et al* reference that does not allow the infrared light to pass through an aperture and a sample supporting substrate so as to be usable in a spectrophotometer or a filterometer. Again there is a recitation of the first and second materials that are used in the construction of the mounting means and the substrate.

Next, in claim 30, similar language is now recited to that explained with respect to claims 1 and 18, i.e. an aperture with the infrared transmitting sample support substrate within the aperture but with the additional step of placing a sample to be analysed onto the infrared light transmitting supporting substrate such that the claim now recites that there are no other materials within the aperture to absorb the infrared light other than the sample that is placed on the infrared light transmitting sample supporting substrate. Thus, again, the infrared light is free to pass through the aperture and encounter only the infrared light transmitting sample supporting substrate and the sample to be analysed. The limitation of the first and second materials is also present.

The same is true of claim 39 where there are a plurality of apertures in the mounting means and with a plurality of infrared light transmitting sample supporting substrates. Again there is a sample placed onto at least one of the infrared light transmitting sample supporting substrates such that infrared light passes through the one or more samples, substrates and apertures and “no other material in the throughbore other than the sample that absorbs infrared light. The claim, for the foregoing reasons, patentably distinguishes over the cited references.

Next, in claim 45, similar amendments have been made, that is, the claim now recites the sample holder having a plurality of mounting means with each having at least one aperture therethrough with the infrared light transmitting sample supporting substrates located within the apertures, and, again, there is a step of placing the sample onto at least one of the infrared light transmitting supporting substrates and where the infrared light passes through the sample supporting substrates and no other the material “in the apertures other than the sample that absorb infrared light”.

Accordingly, similar changes have been made to the language of claims 46, 47 and 53 consistent with the previously explained claim amendments and all now recite the presence of an aperture having a infrared light transmitting supporting substrate upon which can be placed the sample such that the infrared light can pass through the aperture, the infrared light transmitting supporting sample substrate and, if present, the sample itself and no other material that could absorb or block the passage of the infrared light therethrough.

In the aforesaid Office Action, the Examiner has equated the scintillator crystal of Persyk *et al* as somehow akin to the use of the present invention in a spectrophotometer or infrared filterometer and has even suggested that Applicants have stated that the cutting of scintillator material used for IR spectrometers is “totally different” from the method of the instant invention. That is not Applicant’s position. Applicant is not directing the distinction between Persyk *et al* and the present cutting step but rather is pointing out the differences in the actual product of Persyk *et al* as opposed to the Applicants product.

A scintillator is totally different than a spectrophotometer and the product that is used in a scintillator is not usable or at all suitable for use in a spectrophotometer since the scintillator product does not have an aperture with a substrate therein that allows the passage of infrared light through the device. Thus, the difference Applicant is pointing out to distinguish over the Persyk *et al* material and the present invention is not directed to any step in the manufacture of the device but in the device itself and thus, Persyk *et al* is not pertinent to the present invention nor is the application of *In re Thorpe* that requires, as an initial finding, that the products appear to be substantially identical.

The product or device of Applicant is certainly not identical to that of Persyk *et al* and there is no way that one product could be substituted for another or even be used in a similar use. The definition of a scintillator is attached hereto, and, as can be seen, there is no need in a scintillator device to have an aperture having a substrate therein that allows the passage of the infrared light through the device without the presence of any other material that would block or impede that passage of infrared light, other than the sample that is being analysed. As such, a

scintillator device would simply not, nor could it be, used in a spectrophotometer, nor would anyone consider the product of Persyk *et al* to be identical, far less bear any similarity thereto, to the present device other than a sawing step may be used in the preparation of both materials for such devices. Applicants manufacturing steps, including sawing, result in a finished product that is used in a sample card for a spectrophotometer or filtometer.

In any event, the corresponding U.K. application to the present application was issued without objection in the U.K. Patent Office and it is submitted, that, while not binding, that issuance should be persuasive in the case of a close matter.

Accordingly, it is submitted that the newly amended claims are in allowable form over the references of record and an allowance of the present application is respectfully solicited.



Respectfully submitted,

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